

## La Paz County Endangered Species Fund 290 – In Lieu Fee Agreement (Arizona)

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### I. OVERVIEW & BACKGROUND

Location:	La Paz County, Arizona
Date established:	mid-1990s
Species:	Razorback sucker ( <i>Xyrauchen texanus</i> ) Bonytail chub ( <i>Gila elegans</i> ) Desert pupfish ( <i>Cyprinodon macularius</i> )
	Under this in-lieu agreement, there is not one particular site; rather, there are multiple project areas. The species are currently present in some projects areas (e.g., grow-out coves and backwater areas).
Total funds received (since 2005):	\$110,800 (approx.)
Current balance of fund (as of September 2009):	\$61,938.08
Method of credit generation:	The in-lieu fee agreement does not refer to credits; funds are used for specific projects that contribute to revitalizing and protecting endangered fish populations.
Interesting features:	Not a conservation bank, but an in-lieu fee agreement functioning for over 15 years; successful multi-agency coordination with local government

### II. INTRODUCTION / SITE SELECTION

Around 1994-1995, the U.S. Army Corps of Engineers (Corps), La Paz County (County), and the U.S. Fish & Wildlife Service (USFWS) entered into an informal agreement creating the La Paz County Endangered Species Fund 290 (fund), an in-lieu-fee program designed to protect native, endangered fish species of the Lower Colorado River. The fund was created as a means for development entities to meet Corps requirements of providing compensatory mitigation (in the form of monetary payments) as a means to offset adverse impacts to aquatic resources.

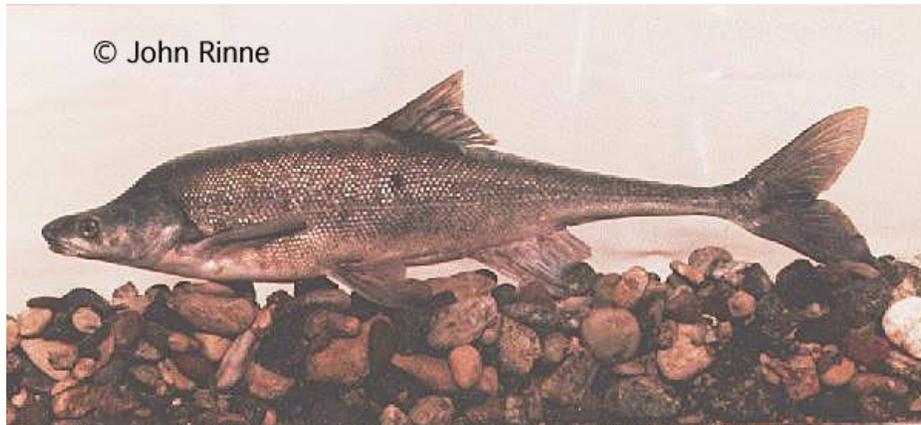
In 2005, the Corps, the County, and USFWS entered into a memorandum of agreement (“agreement”) to codify the fund (see Appendix A), set forth a basic understanding of its functions, and create a formal acknowledgment of each party’s responsibilities. A central

governing provision of the in-lieu fee agreement is that project funds may only be spent to create, enhance, or restore aquatic resources used by the razorback sucker, bonytail chub, and desert pupfish, or for activities directly related to preservation and reintroduction of these species into the Lower Colorado River. Per the agreement, the Corps, as the permitting agency, is responsible for determining the suitability of payment into the fund as a way to fulfill compensatory mitigation requirements.

Upon Corps approval, permit applicants make out a check to the County for a monetary amount pre-determined by the Corps. Neither USFWS nor the Corps has the authority to accept fund contributions, but these agencies direct how the money is spent. USFWS is the agency responsible for implementing beneficial projects for the Lower Colorado River endangered fish species. However, the Corps holds full authority to approve or deny use of the project funds for specific activities proposed by USFWS. In sum, the Corps oversees both compensatory mitigation payments into the fund as well as management disbursements from the fund, and essentially acts as the fund's gatekeeper. Figures 1, 2, and 3 depict examples of the three species covered by the fund.



**Figure 1. The razorback sucker (*Xyrauchen texanus*).**



**Figure 2. The bonytail chub (*Gila elegans*).**



**Figure 3. The desert pupfish (*Cyprinodon macularius*).**

### **III. SERVICE AREA DETERMINATION**

The service area of the fund covers the geographic area of the Los Angeles District (Corps) on the Colorado River (Hoover Dam to the Southern International Border with Mexico), but does not include impacts to the estuaries of the Lower Colorado River. Although the fund is mostly supported by contributions from individual permittees, it has also been used in enforcement actions.

### **IV. MITIGATION METHODOLOGY**

As part of the agreement, the Corps determines the mitigation ratio for projects requiring a Section 404/10 permit on a case-by-case basis using a standard of a minimum of 3:1 where mitigation is required to offset permanent losses and 1:1 where mitigation is required to offset functional losses. Functional losses are those losses associated with the physical, chemical, and biological processes of an ecosystem.

Examples of activities requiring a Corps permit include docks, fishing piers, swimming platforms, ramps, retaining walls, beach creation/enhancement, excavation/dredging, buoy placement, cantilevered decks, boat/jet ski lifts, or any activity which occurs below or breaches the plane of the ordinary high water mark (OHWM) of the Lower Colorado River. New boat docks and boat ramps are both subject to a \$500 in-lieu mitigation fee. Currently, marinas are not a threat to the service area as marina developers are subject to a “no increase in net evaporation” requirement as result of water rights regulations.

Violations impacting the service area of the fund are subject to the following fines:

- Removal of bankline: \$5,000.00
- Removal of bankline during spawning season (1 Jan. - 30 Jun.): \$5,000.00
- Removal of bankline in critical habitat: \$10,000.00
- Unauthorized beach creation: \$5,000.00
- Subsequent violation: \$5,000.00

Also noteworthy to the penalty process, these monetary fines are cumulative. If a violator removes a bankline in critical habitat during spawning season, the ensuing contribution would be \$15,000.00 (\$10,000 + \$5,000).

## **V. FINANCIAL & ECOLOGICAL MANAGEMENT**

There is some evidence that the fund has contributed to protecting and revitalizing endangered fish populations of the Lower Colorado River. For example, striped bass, a non-native game-fish, directly affect Razorback sucker populations by consuming young Razorbacks. To combat this impact, portions of the fund have been used to create grow-out coves that protect young Razorbacks from being preyed upon. As a result, Razorbacks are now found to be spawning in portions of the Colorado River where they previously were not found. In furthering this progress, approved project funds have also been spent on establishing backwater areas of the Lower Colorado River to increase spawning opportunities for endangered fish species.

The Corps has only denied requests for use of the fund monies on rare occasions. For example, one denial involved a request to pay for the air transportation expenses of a specialist coming to visit the Lower Colorado River, as the Corps reasoned that such costs were too tangential to direct management actions to justify the expenditure. The Corps also denied use of the fund monies to purchase a large piece of equipment to be used in part for a management action that benefitted endangered fish species on the Lower Colorado River. The Corps based this denial upon the fact that because the equipment would not be exclusively purchased for the project site (and would also be used for other non-ESA related activities), use of the fund for this purchase was inappropriate.

**VI. LESSONS LEARNED (AND FUTURE CHALLENGES)**

Because there is little opportunity for permittee-responsible mitigation to offset adverse impacts to the Lower Colorado River, the fund fills a void. Without it, there may not be any other appropriate compensatory mitigation for minor projects that can have a significant cumulative impact on endangered fish species.

As the fund increased in size, the parties recognized the need to make the fund more formal in operation. For example, in the early years, because fund contributions were not segregated from County monies, a County Commissioner mistakenly used project funds for non-ESA purposes. The money was repaid, and the fund now has a dedicated account.

In 2008, the Corps and U.S. Environmental Protection Agency (EPA) promulgated a final rule entitled Compensatory Mitigation for Losses of Aquatic Resources, which directly affects the fund. Under the new rule, in-lieu fee programs must include a compensation planning framework, which explains how project sites are selected in a watershed context. The new rule allows for the release of a limited number of advance credits before an in-lieu fee project site is secured and a mitigation plan is approved. The regulations do not prohibit extensive use of advance credits, so long as mitigation projects are approved and initiated within three years of securing the first mitigation credit. Moreover, in-lieu fee programs now will be subject to the same interagency/public review and ecological/administrative requirements as mitigation banks.

In-lieu fee programs in existence prior to July 2008 have until June 2010 to meet the new requirements or terminate operation, although the deadline may be extended for three years. Currently, the La Paz County Endangered Species Fund 290 is operating under this extension, and it is undergoing review to determine the extent of necessary changes to bring the fund into conformity with the new rule.

**VII. APPENDICES**

Appendix

Memorandum of Agreement.....A

Service Area Map .....B